

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,911

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for general assistance/emergency assistance (GA/EA) for a rental deposit. The issue is whether the petitioner was facing a "catastrophic situation" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with his wife and their two children. Until April, 1995, the petitioner had been receiving ANFC through the Middlebury district office. At the time, the Department was paying the petitioner's rent directly to the petitioner's landlord through vendor payments because the petitioner had fallen behind in his rent.

In April, 1995, the petitioner and his family moved to Milton, Vermont, and his case was switched to the Department's Burlington office. Apparently, that office did not continue to vendor any of the petitioner's ANFC payments. After a few months the petitioner fell behind in his rent payments and was evicted. In early September, 1995, the petitioner and his family moved into a camper that was located behind his brother's house in Vergennes--back in the Middlebury district.

On September 15, 1995, the petitioner applied for GA/EA from the Middlebury district office. The petitioner stated that he had located an apartment in Vergennes but needed money for rent and utility deposits in order to move in. The Department denied the petitioner's application because the petitioner could not demonstrate that his eviction from the Milton apartment due to non-payment of rent was for reasons beyond his control.

The petitioner reapplied for GA/EA for the same apartment in Vergennes on September 21, 1995. The next day the Department notified him that his application had been denied because: "you had the ability to pay rent because it was included in your ANFC grant".

Upon receiving this denial the petitioner requested an "expedited hearing"⁽¹⁾ before a Human Services Board hearing officer. On September 22, 1995, this hearing officer denied the petitioner's request to

consider the matter on an expedited basis because the petitioner at that time was still residing in the camper behind his brother's house, and it did not appear that this situation posed any immediate threat to the health and safety of the petitioner and his family. The matter was set for hearing on the next day the hearing officer was scheduled to conduct hearings in Middlebury--which was October 13, 1995.

At the hearing held on October 13 the petitioner's caseworker testified that he denied the petitioner's application because of his determination that the petitioner was "at fault" in his eviction from the apartment in Milton because he failed to pay the rent, which the worker determined the petitioner had the ability to do based on his receipt of ANFC throughout the period.⁽²⁾

The petitioner testified that shortly after the denial of his GA/EA application he had moved into the new apartment anyway, but that he still owed the landlord \$200 for the rent deposit. However, the petitioner did not allege that he was currently facing a loss of housing because the rent deposit remained unpaid. The petitioner stated that his failure to pay his rent in Milton was due to the apartment's uninhabitability and the fact that he had other expenses during this time,⁽³⁾ but he also stated that he was agreeable to the Department placing his current ANFC grant on vendors to pay his present landlord.

ORDER

The Department's decision is affirmed.

REASONS

The GA/EA regulations (W.A.M. §§ 2600C and 2800C) provide that applicants whose income in the last 30 days is equal to or greater than the ANFC payment standard can qualify for GA/EA only if they are facing a "catastrophic situation" as defined (identically) in sections 2602 and 2802 of those regulations. These sections were amended as of September 1, 1995, to provide as follows:

The petitioner seems to concede that as of the date of the hearing he was not facing an imminent loss of housing. He also concedes that the above regulations allow the Department to determine whether an applicant has the ability to find housing without granting GA/EA for that purpose. Thus, there is little question that if the Department had made this inquiry when the petitioner applied for benefits (as noted above, the petitioner was able to move into and remain in the new apartment without paying the entire security deposit in advance) he would not have qualified for GA/EA on this basis.

The problem in this case is that at the time of his application the Department did not explore "alternatives" with the petitioner because it determined at the outset that the petitioner did not meet the "fault" provisions under subparagraph b of the above regulation--i.e., that the petitioner had the ability to pay his rent and did not use his income to pay for other basic necessities or withhold rent in an effort to correct substandard housing. The hearing officer agrees with the petitioner that in evaluating GA/EA applications under the above regulations regarding "catastrophic situations" the Department should first consider available "alternatives"--and then, only if no such alternatives are found to be available, proceed into the highly problematic and value-laden area of determining whether applicants are "at

fault" in having lost their last housing. Indeed, this seems to be the prevailing practice in the other districts that this hearing officer serves, and the Department does not maintain that it shouldn't have been applied here.⁽⁴⁾

At any rate, inasmuch as it turns out that the petitioner was able to resolve his housing problems without resort to EA/GA, the Board need not consider whether the petitioner was "at fault" in being evicted from his apartment in Milton.⁽⁵⁾ The Department's decision is in accord with the applicable regulations and is affirmed.

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1. See Procedures Manual § P-2610D.
2. The rent for the Milton apartment was \$550 a month. The worker determined that the petitioner's income (from ANFC and child support) was \$788 a month.
3. It does not appear that the petitioner contested the eviction or filed a counterclaim based on lack of habitability.
4. It should also be noted that in the hearing officer's experience the Department usually provides assistance and referral in finding alternatives for individuals and families who have been denied GA/EA.
5. The Board agrees that the Board's decision in Fair Hearing No. 7,728 (affirmed by the Vermont Supreme Court) is still controlling in determining "fault" under the above regulations.